

## REMARKS/ARGUMENTS

This application has been reviewed in light of the Office Action mailed on February 6, 2009. Claims 1-5 and 9-12 are pending in the application with Claims 1 and 9 being in independent form. By the present amendment, Claims 1-5 have been amended, Claims 6-8 have been cancelled, and Claims 9-12 have been newly added. Support for the amendments can be found throughout Applicants' specification, such as at paragraphs [0028], [0030], and [0036]. No new matter or issues are believed to be introduced by the amendments.

Claims 2 and 3 were rejected under 35 U.S.C. §112, second paragraph. Claims 2 and 3 have been amended in a manner which is believed to overcome the rejection. Withdrawal of the rejection is respectfully requested.

Claims 1-8 were rejected under 35 U.S.C. §102(b) as being anticipated by Hwang (U.S. Application No. 2002/0077141). Claims 6-8 have been cancelled.

Claim 1, as amended herein, recites, *inter alia*, as follows:

“...transmitter means for transmitting either (i) first power control commands generated by the mobile station in response to the measured parameter or (ii) second power control commands derived from the non-predetermined data values ...

wherein determination of which power control commands to transmit is based on a predetermined error rate.”(emphasis added)

Hwang fails to disclose and/or suggest “...transmitter means for transmitting either (i) first power control commands generated by the mobile station in response to the measured parameter or (ii) second power control commands derived from the non-predetermined data values,” and/or “wherein determination of which power control commands to transmit is based on a predetermined error rate,” as recited in amended independent Claim 1.

Hwang discloses an apparatus and method for controlling transmission power of a DSCH in a mobile communication system (Abstract). In addition, as noted at page 2, paragraph 2 of the present Office Action, the Examiner stated that Hwang teaches a slot, which is a portion, which includes data, such as, Data1, TPC, TFCI, Data2, and Pilot. The Examiner further states that the “pilot strength, which is a parameter of the DL\_DCH slot, is measured for the purpose of downlink power control.” In other words, according to Hwang, the downlink power control signal includes pilot data.

In contrast, in the present disclosure, as presented in the Claims as originally filed and as evidenced throughout the specification, pilot data (or pilot symbols) are not used in downlink symbols. In fact, the Claims of the present disclosure specifically teach away from such feature. At paragraph [0016], of the present disclosure, it is stated that “downlink closed loop power control may be operated by measuring the quality of received downlink non-predetermined data instead of predetermined pilot symbols.” (emphasis added) Furthermore, at paragraph [0024], of the present disclosure, it is stated that “pilot symbols for each active mobile station are not necessary.” (emphasis added) Moreover, FIG. 3 of the present disclosure specifically shows only non-predetermined data values being sent between a mobile station and a base station. Clearly, the exemplary embodiments of the present disclosure are not concerned with pilot data, but only with non-predetermined data.

Additionally, in the present disclosure, either first power control commands or second power control commands may be sent based on a predetermined error rate. In other words, the process is selective based on the lowest error rate. Hwang clearly does not teach and/or suggest such a feature.

Independent Claim 9 includes the same or similar limitations to those of Claim 1, and is allowable over the prior art of record for at least the same reasons presented above for the patentability of independent Claim 1.

Accordingly, the withdrawal of the rejection under 35 U.S.C. §102(b) with respect to Claim 1 and allowance thereof is respectfully requested.

Dependent Claims 2-5 are allowable over the prior art of record for at least the same reasons presented above for the patentability of independent Claim 1. Accordingly, the withdrawal of the rejection under 35 U.S.C. §102(b) with respect to dependent Claims 2-5, and allowance thereof are respectfully requested.

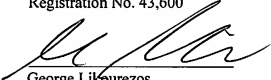
In view of the foregoing amendments and remarks, it is respectfully submitted that all Claims presently pending in the application, namely, Claims 1-5 and 9-12, are believed to be in condition for allowance.

If the Examiner should have any questions concerning this communication or feels that an interview would be helpful, the Examiner is requested to contact the undersigned.

Respectfully submitted,

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